Cr.MMO No. 124 of 2006.

21.8.2007 Present: Mr. R.K. Bawa, Senior Advocate with Mr. P.P. Chauhan and Mr. Inderjit Singh Narwal, Advocates, for the petitioners.

Mr. Dushyant Dadwal, Advocate, for the respondents.

Between four petitioners herein and two respondents herein (respondent No.1 being the firm M/S. Sturdy Industries Limited and respondent No.2 being its Director) Civil Suit for the recovery of money is pending in this Court on its original side. The petitioners herein are defendants 1, 2, 3 and 4 in the aforesaid suit. There are three other defendants in that suit, namely M/S. Yurak International Trading Company, Miss Joyce and Mr. Ragan. Respondent No.1 herein has also filed a Criminal Complaint under Sections 406, 409, 417, 418 and 420 I.P.C. against the petitioners and the aforesaid three persons, namely M/S. Yurak International Trading Company, Miss Joyce and Mr. Ragan. This Criminal Complaint is pending disposal in the Court of learned Judicial Magistrate 1st Class (Additional Chief Judicial Magistrate), Kasauli.

The parties on the intervention of the Court have today come to terms. Mr. Dadwal learned Counsel appearing for the respondents and Mr. R.K. Bawa, learned Senior Counsel appearing for the petitioners both submit that they have instructions of their respective clients to submit and state in this Court that the aforesaid parties are ready and willing to get all their disputes adjudicated upon and settled through arbitration to be conducted by a sole Arbitrator to be appointed by this Court. They also submit and state before me that since the parties have now decided to go in for arbitration as a mechanism for the resolution of all their pending disputes, the respondents have decided to withdraw the suit, being Civil Suit No.16 of 2005 pending in this Court in its entirety. Similarly respondent No.1 has also decided to withdraw the aforesaid Criminal Complaint pending in the Court of learned

Judicial Magistrate 1st Class (Additional Chief Judicial Magistrate), Kasauli in its entirety, even though in the aforesaid Complaint names of accused 5, 6 and 7 have already been deleted. The aforesaid suit shall be withdrawn against defendants 5, 6 and 7 as well.

Based upon the aforesaid agreement between the parties, this petition is disposed of. Criminal Complaint No.91/2 of 2004: M/s. Sturdy Industries Limited versus M/s. Marigold International (P) Limited and others pending in the Court of learned Judicial Magistrate 1st Class (Additional Chief Judicial Magistrate), Kasauli is dismissed as withdrawn. Similarly, Civil Suit No.16 of 2005: M/s. Sturdy Industries Limited and another versus M/s. Marigold International (P) Limited and others, pending in this Court is also hereby dismissed as withdrawn.

All the disputes forming the subject matter of the aforesaid Civil Suit are hereby referred to the arbitration of Mr. Naresh Kumar Sood, Advocate, who, with the consent of the learned Counsel for the parties, is hereby appointed as the Single Member Arbitral Tribunal. The learned sole Arbitrator shall enter upon reference immediately and make an earnest and sincere endeavour to conclude the arbitral proceedings and pass the arbitral award accordingly without any delay. The parties through their learned Counsel are directed to appear before the learned sole Arbitrator in his Chamber in Shimla on 29th September, 2007 at 11.00 AM. The respondents are at liberty to file their claims and similarly the petitioners are also at liberty to file their counter claims/statement in defence before the learned Arbitrator.

The Arbitrator's fee is fixed at Rs.30,000/- in lump-sum inclusive of secretarial and other allowances as well as expenses. This fee shall be paid to him by the parties in equal shares within four weeks from today. If the Arbitrator has to go out of Shimla for the conduct of arbitration

proceedings, he shall be entitled to be paid, again in equal shares, all the actual travelling and boarding and lodging expenses as well as daily fee at the rate of Rs.5, 000/-.

The respondents who are the plaintiffs in the aforesaid suit are at liberty to take steps for the refund of the Court fee.

Cr.M.P. No. 538 of 2006.

In view of the disposal of the main petition, this application also stands disposed of and interim order dated 29th December, 2006 is vacated.

August 21, 2007. **(V.K. Gupta), C.J.**
(rc)